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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/297,774

05/07/1999

Kimio Ueda

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THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/297,774	<b>Applicant(s)</b> UEDA ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/99, 12/04, 12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **D236+ETAILED ACTION**

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

### ***Drawings***

1. The drawings are objected to because in Figure 1, a line from the numeral 26 to the backsheet it denotes should be set forth. Where is 62 shown, see page 8, lines 1-2? In Figure 2, 26 does not denote the backsheet and 70 does not denote the outer surface of the film. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be

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labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Description***

2. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: page 13, second full paragraph.

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

4. The disclosure is objected to because of the following informalities: In Figures 1 and 2, what are 33, 35, 63 and 65? What are 80.76 and 82.74 in Figure 2? Where is the constant Co, see page 20, line 8, set forth?

Appropriate correction is required.

### ***Claim Objections***

5. Claims 2 and 15 are objected to because of the following informalities: "facing", each, should be --faceable--. Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

6. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 14, positive structural antecedent bases for “the outermost”, line 3, and “the outermost portion”, lines 4-5, should be set forth. Also, lines 3-5 of the claims are inconsistent/unclear, i.e. if the backsheet is part of the article as claimed, how can it be positioned at and cover at least a portion of the outermost portion of the article, i.e. itself? In claims 10-12 and 16-18, a positive structural antecedent basis for “the bicomponent fiber” (Note only antecedent basis for bicomponent fibers has been previously provided).

***Claim Language Interpretation***

7. The claim terminology is interpreted in light of the definitions at page 4, 30-31, page 4, line 33-page 5, line 4, page 5, lines 6-8, page 6, lines 3-7, page 10, lines 11-13, page 16, lines 1-2 and 6-9, and page 16, line 12-page 22, line 11, as best understood, see paragraph 4 supra.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin '206 in view of Glaug et al '544 and Willey et al '736.

Claim 14: See Claim Language Interpretation section supra, herein after also referred to as CLI, and '206 at the abstract, the Figures, col. 1, lines 15-19, col. 1, line 48-col. 2, line 9, col. 2, lines 20-39 and 40-43, col. 2, line 65-col. 3, line 67, col. 4, lines 50-57, col. 5, lines 21-57, col. 6, lines 1-14 and cols.6-7, Examples I and II and Table I, i.e. '206 teaches a disposable absorbent article 20 comprising a backsheet, see col. 4, lines 54-57, comprising a nonwoven web, see, e.g., col. 1, lines 58-60 and 11 and/or 14, positioned at the outermost of the absorbent article and for covering at least a portion of the outermost portion of the absorbent article, as best understood, see, e.g., col. 4, lines 54-57 and col. 5, lines 28-31, wherein the nonwoven web is a spunbonded nonwoven web comprising spunbonded bi-component plastic fibers, see, e.g., col. 3, lines 12 et seq. Claim 14 further requires the backsheet comprise a containment assembly also including a topsheet and an absorbent core disposed therebetween. While '206 at col. 6, lines 6-11 and col. 4, lines 54-57 teach a web which is a backsheet of a diaper/absorbent garment, it does not teach the other components thereof explicitly. However, see '544 at col. 4, line 31-col. 5, line 16, col. 11, lines 58-59 and col. 5, lines 56-60 and '736 at col. 6, lines 8-25. Therefore to employ the backsheet nonwoven web of '206 as part of a containment assembly of a diaper/absorbent garment also including a topsheet and an absorbent core therebetween, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such are known components used in combination with a backsheet to define a containment assembly/a diaper/absorbent garment and the desire of '206 to define a diaper/absorbent garment.

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Claim 15: The backsheet further comprises a plastic film having an outer-facing surface and a body-facing surface, and the nonwoven web is joined with the outer-facing surface of the plastic film to form a laminate, see, e.g., '206 at col. 4, lines 50-52 and col. 5, lines 15-41.

Claim 16: The bi-component fiber contains a polyethylene and a polypropylene, see, e.g., col. 3, lines 45 et seq.

Claim 17: This claim requires the bi-component fiber have a core of the polypropylene and a sheath of the polyethylene. See, e.g., col. 3, lines 48-50 and 63-67 of '206 as well as '544 at, e.g., col. 4, lines 45-50 and '736 at, e.g., col. 3, lines 64 et seq and thereby '536 at, e.g., page 2, lines 44-48, 51-52 and Figure 2. Therefore to make the distinct separate phases in the fibers of '206 core and sheath phases as claimed, if not already, would be obvious, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious, i.e. here the equivalents are interchangeable for the desired function of providing polypropylene/polyethylene, i.e. polyolefin, bicomponent fibers of a nonwoven backsheet of a diaper.

Claim 18: The bi-component fiber has from about 55% to about 95% by weight of the polyethylene, as best understood, see, e.g., col. 3, lines 51-53 of '206 and note MPEP 2131.03 and 2144.05.

Claim 19: This claim requires the spunbonded nonwoven web be placed in the disposable absorbent article so that the fiber direction of the spunbonded bi-component plastic fibers is aligned with the longitudinal direction of the disposable absorbent article. It is noted that the claim does not require all the fibers and/or the entirety of each fiber be so aligned nor how such longitudinal direction of the article relates to the cross direction or machine direction of the web.

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See col. 5, lines 42-57 of '206, i.e. fibers, including those oriented in machine direction and/or cross-machine direction, are drawn/elongated/oriented/further oriented in the machine direction and or cross-machine direction of the web/backsheet due to stretching forces applied thereto, i.e. at least a portion of at two fibers are aligned as claimed. Note also paragraph 10 *infra*.

Claims 20-22: These claims require the spunbonded nonwoven web have a tensile strength of at least 80 gf/cm in the traverse direction of the disposable absorbent article, the nonwoven web has a hand value of Koshi of less than about 16.0 (as set forth on page 13 of the instant application, a feeling related to bending stiffness), a hand value of Shari of from about 0.5 to about 9.5 (as set forth on page 13 of the instant application, a feeling relating to a crisp and rough surface), and a hand value of Fukurami of less than about 5.0 (as set forth on page 13 of the instant application the feeling relating to bulk, richness and good formation), the nonwoven web has a fuzz level of less than about 1.0 mg/cm<sup>2</sup> ( as set forth on page 13 of the instant application, a feeling that is related to skin friendliness). While '206 does not explicitly teach such claimed ranges tested in a like manner, see *CLI supra*, the '206 reference teaches a nonwoven spunbonded web as claimed having a cross-direction tensile strength, a machine direction tensile strength, a fuzz level when tested according to another test. See Examples 1 and II and Table I of '206. See also the cited portions of '206 esp. col. 1, lines 35-37, col. 2, lines 20-32, col. 6, lines 1-5 and 11-14, and page 13, lines 4 et seq of the instant application, i.e. the same purpose, e.g. nonwoven web which is reduces friction/rubbing/chaffing between web and skin, as that disclosed by Applicant. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that the similar material of the '206 reference would also include the claimed ranges when tested in a like manner as the claimed material. In



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any case, i.e. the Examiner's second position, even if the '206 does not include the claimed range, the general conditions of the claim are disclosed thereby, e.g. nonwoven spundbonded web/backsheet of similar materials for similar purpose, see discussion supra, and it is not inventive, i.e. it would be obvious to one of ordinary skill in the art, to discover the optimum or workable ranges, i.e. the claimed ranges, by routine experimentation, In re Aller, 105 USPQ 233 (CCPA 1955). Note the cited portions of '206 recognize that abrasion resistance, tensile strength, hand/drape are result- effective variables, i.e., variables which achieves a recognized result, e.g. , less chafing/friction between web and skin.

Claims 1-3, 5-6, 8, and 10-12: See discussion supra of claims 14-21 which rejections/rationales also apply to these claims.

Claim 4: This claim requires the backsheet has a mean value of coefficient of friction (MIU) of less than about 0.21. Se discussion of claims 20-22 supra which grounds of rejection/rationale also apply here to the range of coefficients of friction. Note again col. 6, lines 11-14 of '206.

Claim 7: The nonwoven web is a carded nonwoven web, see col. 3, lines 34-44 of '206.

Claim 9: The carded nonwoven web comprises bi-component fibers, see col. 3, lines 45-50 of '206.

Claim 13: The plastic film has a basis weight of from about 5 g/m<sup>2</sup> to about 35 g/m<sup>2</sup>, see, e.g., col. 4, lines 52-53 and note again MPEP 2131.03 and 2144.05.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See also paragraph bridging cols. 8-9 of '555, the last full paragraph of col. 6, of '063 and col. 4, lines 59-61, col. 5, lines 25-48 and col. 6, lines 19-22 of '935.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

May 8, 2010